

## § 10.431

the provisions of this part, the exporter's or producer's records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in part 163 of this chapter.

### § 10.431 Failure to comply with requirements.

The port director may apply such measures as the circumstances may warrant where an exporter or a producer in the United States fails to comply with any requirement of this part. Such measures may include the imposition of penalties pursuant to 19 U.S.C. 1508(g) for failure to retain records required to be maintained under § 10.430.

#### POST-IMPORTATION DUTY REFUND CLAIMS

### § 10.440 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.441 of this subpart. Subject to the provisions of § 10.416 of this subpart, CBP may refund any excess duties by liquidation or re-liquidation of the entry covering the good in accordance with § 10.442(c) of this part.

[CBP Dec. 05-07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06-39, 71 FR 76133, Dec. 20, 2006]

### § 10.441 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 10.440 of this subpart must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating

## 19 CFR Ch. I (4-1-12 Edition)

good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) Subject to § 10.413 of this subpart, a copy of a certification of origin or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

[CBP Dec. 05-07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06-39, 71 FR 76133, Dec. 20, 2006]

### § 10.442 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.441 of this subpart, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the port director determines that any protest relating to the good has not been finally decided, the port director will suspend action on the claim for refund filed under this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim for refund filed under this subpart until judicial review has been completed.

(c) *Allowance of claim—(1) Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the port director

will take into account the claim for refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) *Denial of claim*—(1) *General.* The port director may deny a claim for a refund filed under § 10.441 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of § 10.441 of this subpart, if the certification submitted under § 10.441(b)(2) of this subpart cannot be accepted as valid (see § 10.413 of this subpart), or if, following an origin verification under § 10.470 of this subpart, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.470 of this subpart.

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under

this subpart. In either case, the port director will give the importer notice of the denial and the reason for the denial in writing or via an authorized electronic data interchange system.

[CBP Dec. 05-07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06-39, 71 FR 76133, Dec. 20, 2006; CBP Dec. 10-29, 75 FR 52450, Aug. 26, 2010]

#### RULES OF ORIGIN

##### § 10.450 Definitions.

For purposes of §§ 10.450 through 10.463 of this subpart:

(a) *Adjusted value.* “Adjusted value” means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation and the value of packing materials and containers for shipment as defined in § 10.450(m) of this subpart;

(b) *Exporter.* “Exporter” means a person who exports goods from the territory of a Party;

(c) *Fungible goods or materials.* “Fungible goods or materials” means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

(d) *Generally Accepted Accounting Principles.* “Generally Accepted Accounting Principles” means the principles, rules, and procedures, including both broad and specific guidelines, that define the accounting practices accepted in the territory of a Party;

(e) *Good.* “Good” means any merchandise, product, article, or material;

(f) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties.* “Goods wholly obtained or produced entirely in the territory of one or both of the Parties” means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;